

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: ) 19-MD-2875(RBK-JS)  
)  
) Camden, NJ  
VALSARTAN NDMA PRODUCTS ) May 27, 2020  
LIABILITY LITIGATION ) 2:00 p.m.

TRANSCRIPT OF TELEPHONE STATUS CONFERENCE  
BEFORE THE HONORABLE ROBERT B. KUGLER  
UNITED STATES DISTRICT JUDGE AND  
THE HONORABLE JOEL SCHNEIDER  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: ADAM M. SLATER, ESQUIRE  
MAZIE, SLATER, KATZ &  
FREEMAN, LLC  
103 Eisenhower Parkway  
2nd Floor  
Roseland, NJ 07068

For the Defendants: SETH A. GOLDBERG, ESQUIRE  
DUANE MORRIS, LLP  
30 South 17th Street  
Philadelphia, PA 19103

Audio Operator: ECR

Transcribed by: DIANA DOMAN TRANSCRIBING, LLC  
P.O. Box 129  
Gibbsboro, NJ 08026  
Office: (856) 435-7172  
Fax: (856) 435-7124  
Email: dianadoman@comcast.net

Proceedings recorded by electronic sound recording; transcript  
produced by transcription service.

I N D E X

<u>COLLOQUY:</u>	<u>PAGE</u>
Additions to plaintiff's leadership	4
Discussion regarding special master	6

Colloquy

3

1 (The following was heard via telephone conference  
2 at 2:00 p.m.)

3 JUDGE SCHNEIDER: Okay, Judge Kugler, if you want to  
4 proceed. We're on the record in this conference, and if need  
5 be we can get a transcript.

6 JUDGE KUGLER: All right. That was pretty fancy  
7 doing, Judge Schneider.

8 JUDGE SCHNEIDER: Well, I can press \*2 as well as  
9 the next person.

10 JUDGE KUGLER: Well, maybe we should keep you on a  
11 little longer, I don't know.

12 (Laughter)

13 JUDGE KUGLER: Anyway, welcome everybody. If you're  
14 going to speak and say anything, then please identify  
15 yourselves by name first.

16 I understand from a usually, usually reliable source  
17 that you had a productive morning with Judge Schneider and  
18 that there isn't a whole lot that needs to be said at this  
19 point, is that correct? We'll start with plaintiffs.

20 MR. SLATER: Yes, Judge, it's Adam Slater. How are  
21 you? Yeah, we -- we spent two hours. Judge Schneider covered  
22 everything from the mundane to the complex and I think that we  
23 covered a lot. I can't think of any significant issues for  
24 this call and, you know, everybody's question probably going  
25 in was what you spoke about first, which is just what is

Colloquy

4

1 happening with the courthouse and projecting and, you know,  
2 from being here in New Jersey, I think we all know that we  
3 don't really know.

4 JUDGE KUGLER: That's the most unnerving part of all  
5 this. Frankly, my opinion is, we don't really know much about  
6 anything and a lot of what we heard over the months turns out  
7 not to be entirely accurate. But, you know, I leave that up  
8 to the medical experts and the politicians in charge as to  
9 where we go.

10 I did -- there is this issue and the plaintiffs want  
11 to add people to the leadership, is that correct?

12 MR. SLATER: Yes, Your Honor.

13 JUDGE KUGLER: I don't think there's any problem  
14 with that. The defendants really don't care one way or the  
15 other. We've looked at it and I don't think that's going to  
16 be a problem and we can do that. Okay?

17 MR. SLATER: Thank you. And I'll be submitting a  
18 letter, Your Honor, a little after this call for one  
19 additional proposed member of the PSE, who filed a class  
20 action third-party payor complaint that's now part of the MDL  
21 as well. That's just to supplement. He wasn't -- he wasn't  
22 included in the motion, but we're asking to supplement, just  
23 add one other attorney.

24 JUDGE KUGLER: Okay. Anybody else want to say  
25 anything?

Colloquy

5

1 MR. GOLDBERG: Nothing for defendants, Your Honor.  
2 This is Seth Goldberg.

3 JUDGE KUGLER: I guess the big news is we may get  
4 live sports pretty soon, huh? Baseball, hockey, basketball.  
5 Kind of neat. It'll be kind of fun to do that.

6 All right, then we will --

7 MR. SLATER: Are there going to be fans in the  
8 stands?

9 JUDGE KUGLER: Who cares. There'll be fans on T.V.  
10 like me. That's all I care.

11 Well, listen then, thank you. And, Mr. Goldberg and  
12 Mr. Slater, can you hang on just for a minute while everyone  
13 else hangs up?

14 MR. SLATER: Yes, of course.

15 THE COURT: And we'll see you all next month. And  
16 good luck and stay safe and well, everybody. Thank you.

17 (Parties disconnecting from conference call)

18 JUDGE SCHNEIDER: Judge, should I get off the line?

19 JUDGE KUGLER: Yeah, please, Joel, I'll talk to you  
20 soon.

21 MR. SLATER: Goodbye, Judge.

22 MR. GOLDBERG: Thank you, Judge.

23 JUDGE SCHNEIDER: Okay.

24 MR. SLATER: That was impressive.

25 JUDGE SCHNEIDER: So we just have Mr. Slater and Mr.

Colloquy

6

1 Goldberg, is that it?

2 MR. SLATER: Yes, Your Honor.

3 MR. GOLDBERG: Yes, Your Honor. This is Seth  
4 Goldberg.

5 THE COURT: All right. Have you done anything more  
6 about your proposal for a special master? Do you have  
7 anything you want to talk to me about in that regard? Or not,  
8 I mean it's up to you.

9 MR. GOLDBERG: Yes. Your Honor --

10 MR. SLATER: For the plaintiffs, Your Honor, we --  
11 you know, as I had indicated on the first call, we were -- you  
12 know, I thought that our -- our, you know, leaning was to see  
13 if we could have Judge Schneider retained as special master  
14 and I again confirmed with my team that we thought that made a  
15 lot of sense. And so, you know, we're all for that.

16 We spoke -- Mr. Goldberg reached out to me this  
17 morning. I think they have a different view of it. You know,  
18 I was thinking -- I think -- I won't speak for Seth, but he  
19 said that -- you told me that there was an issue about cost.  
20 I was thinking that could probably be handled in terms of  
21 allocations by the Court, but I'll -- I'll hand over to you  
22 because we're certainly -- we certainly feel like it makes the  
23 most sense for continuity's sake for Judge Schneider to  
24 continue managing the case.

25 JUDGE KUGLER: Mr. Goldberg?

Colloquy

7

1 MR. GOLDBERG: Sure, Your Honor. Yeah, I -- you  
2 know, I've been discussing this with all of the counsel for  
3 all of the defendants and, you know, went back to your  
4 original email on this back in early March where you had  
5 suggested Judges Donio or Williams could possibly take the  
6 slot as magistrate in this matter. And the defense counsel,  
7 we think that that makes a lot of sense.

8 You know, both judges have a tremendous amount of  
9 experience with complex litigation, class actions, and of  
10 course worked with you on a number of matters over the years.  
11 And, you know, we expect that they would be able to, you know,  
12 fill the role, you know, capably, more than capably.

13 And, you know, what we were thinking, you know,  
14 looking ahead is that really at the end of this year, we're  
15 gonna have completed all of the written discovery, all of the  
16 discovery requests are being negotiated and -- and, you know,  
17 resolved with Judge Schneider. If Rule 12 motions will be  
18 decided, we'll have these briefed by the end of the year.

19 And so we're really gonna begin a new phase of the  
20 case in 2021. We're gonna be getting into class  
21 certification, getting into merits. And so, you know, while  
22 Judge Schneider has presided over all of the written  
23 discovery, this is really the kind of time for a new -- I  
24 guess the continuity issue is not as -- as critical because  
25 we're really entering into a different phase of the case.

Colloquy

8

1           From the standpoint of, you know, a special master,  
2   I think given -- given the cost of a special master in a  
3   matter like this which could, you know, get very high, of  
4   course, special masters, you know, have -- can control how  
5   much of the cost it's going to be, but we're not just dealing  
6   with the cost, but also the complexity of allocating the cost  
7   among the -- the many defendants and different supply chain  
8   levels. So from a cost standpoint, we think there's --  
9   there's more to it than just the straight cost. And given --  
10   given Judge Donio and Judge Williams' experience, we think  
11   that that is a better -- they are better suited to replace  
12   Judge Schneider.

13           JUDGE KUGLER: Well, let me ask you this. What do  
14   you think the cost allocation issues and difficulties will be  
15   for the defense side on this? I mean what are you hearing  
16   from your -- from your fellow colleagues?

17           MR. GOLDBERG: Well, I mean we -- we have -- we have  
18   throughout -- you know, throughout this case have had so many  
19   different issues come up across the different supply chains  
20   during -- you know, during any one of these conferences that  
21   Judge Schneider has on a biweekly basis; that the issues as  
22   they get raised, it's going to be difficult to figure out how  
23   to allocate any one issue to any level of the supply chain,  
24   let alone to the multiple defendants in the different levels  
25   of the supply chain. And one thing that we don't want to do

Colloquy

9

1 is become mired down in cost allocation issues, especially  
2 when there are extremely capable magistrate judges who have  
3 the experience to do this work. We don't think -- we don't  
4 think adding the cost or the complexity of the cost is  
5 warranted under the circumstances.

6 JUDGE KUGLER: Well, what -- what do you anticipate  
7 the total cost would be to have a special master beginning,  
8 you know, next year sometime when you have just said you don't  
9 think there's going to be a whole lot more work to be done for  
10 the magistrate judge?

11 MR. GOLDBERG: Well, I don't know that there's not  
12 going to be -- I think -- I don't know that -- it's not that  
13 there's not gonna be a lot of work to be done, it's going to  
14 be a different kind of work, different kinds of issues,  
15 because we're now going to be dealing with the class  
16 certification issues, we're going to be dealing with the  
17 merits issues.

18 JUDGE KUGLER: Yeah, but that's all me. He won't be  
19 involved in that. A special master wouldn't necessarily be  
20 involved in those things. I wouldn't have a special master  
21 decide those kinds of things.

22 MR. GOLDBERG: Well, I -- I mean I think -- I think  
23 we're gonna have plenty of issues with respect to class  
24 certification discovery, especially as we need to take  
25 depositions of the -- the many different class representatives

1 and obtain discovery from them. We're gonna have issues with  
2 respect to expert discovery. And that's just on the class  
3 certification side.

4 Of course, we're gonna have a lot of different  
5 expert issues with respect to the science. You're gonna have  
6 chemists and oncologists and epidemiologists and, you know,  
7 many different expert issues are going to be raised and I --  
8 I, you know, foresee a lot of work that a magistrate judge  
9 would have to do. But it will be -- it will be different than  
10 the work that Judge Schneider has done on the written  
11 discovery.

12 You know, but I -- I haven't polled all of my  
13 colleagues on specific costs, but I -- you know, I -- I do  
14 expect the costs -- I did get some information from -- in some  
15 cases that special masters could be -- you know, when all is  
16 said and done, could be, you know, well into the -- you know,  
17 close to a million dollars for one special master over -- over  
18 the course of a couple years, depending on the complexity of  
19 the issues, the rates, and, you know, it just doesn't seem  
20 warranted given the experience of Judge Williams and Judge  
21 Donio. And --

22 JUDGE KUGLER: Well, let me -- go ahead.

23 MR. GOLDBERG: And we don't know -- I mean I -- you  
24 know -- I didn't want to cut you off, Judge.

25 JUDGE KUGLER: No, I cut you off, so please, I'm

1       sorry, keep going, please.

2               MR. GOLDBERG: Well, I mean those are -- you know,  
3       those are just a few of the issues. But, you know, even cost  
4       aside with -- with respect to a special master, I think  
5       there's also the reality of the fact that a special master  
6       doesn't have the authority to make decisions, that it's harder  
7       for a special master -- you know, this has been a case where  
8       the parties have wanted to create a record and have as much of  
9       a record created as they can, and that's not as always --  
10      always as easy with a special master. It's certainly  
11      logistically more likely to occur if we're in the courtroom  
12      with the magistrate judges.

13              So these are -- these are some of the issues that  
14      raise the complexity -- make the special master a more  
15      involved and complex assignment as opposed to have a  
16      magistrate judge just render the rulings the way Judge  
17      Schneider has been doing it.

18              JUDGE KUGLER: Let me -- let me back up a minute.  
19      You were talking about expert discovery. I've never used a  
20      magistrate judge in expert issues and I -- I don't think I can  
21      see a situation in this case where I would. I mean it's --  
22      there's going to be a lot of experts and there's -- and you're  
23      right, there are a lot of different fields they're gonna be  
24      opining in all leading up to the Daubert motions on which much  
25      of this case hangs. But I've always handled all of those

1 myself, to be honest with you. I don't think a magistrate  
2 judge or even a special master were to get involved in those  
3 kind of things.

4 Let me ask you this, and this is really premature.  
5 At some point obviously I'm going to be trying to focus  
6 everyone's attention on a potential settlement in this case,  
7 and this is -- this is a difficult case to logically approach  
8 for settlement because there's so many moving parts in the  
9 case. But at some point we gotta -- we gotta talk about that.  
10 I mean we just have to explore that.

11 My thinking is that that's probably best done with a  
12 special master who has no connection to me or the court so  
13 that those kind of discussions can remain entirely  
14 confidential from what's going on here, so everybody feels  
15 comfortable talking frankly with whoever the person is and,  
16 you know, talking with confidence that it's not gonna somehow  
17 get back to the Court, so that you don't have to be afraid of  
18 some judge getting p.o.'d because, you know, nobody -- or  
19 somebody may seem unreasonable, you know, whatever it is. I  
20 mean I always worry about those kind of issues. But certainly  
21 I would think that you would want to explore --

22 MR. GOLDBERG: Yeah.

23 THE COURT: -- a special master for that purpose,  
24 wouldn't you?

25 MR. GOLDBERG: Yeah. Yeah, that's sort of a

1 different -- I mean I think we'd look at it different and I  
2 think, you know, we may even have envisioned that in some way  
3 as -- as, you know, that -- that is a cost that we may end up  
4 having to incur. I think you're right that we would need  
5 somebody who's really independent from the Court and from the  
6 parties in that slot. And, you know, assuming that were to be  
7 something that happened, then having two special masters would  
8 -- would, you know, sort of even compound the cost and  
9 complexity.

10 Of course, when you're getting to the point of a  
11 settlement, maybe things have become a little bit streamlined.  
12 You know, you sort of -- you sort of have narrowed some of the  
13 issues that, you know, make -- make appointing a special  
14 master in that role more -- you know, warrant that appointment  
15 at that time, and so some of those issues about the complexity  
16 of it are, you know, alleviated and make more sense.

17 You know, I think in terms of the appointment of a  
18 special master for discovery-related issues and managing the  
19 litigation, that's where defendants feel that Judge Donio or  
20 Judge Williams would be the most suitable option.

21 THE COURT: Well, of course, it's not unknown to  
22 have more than one special master in a complex case. That's  
23 always an option. But let's do this.

24 UNIDENTIFIED SPEAKER: Judge, can I --

25 JUDGE KUGLER: Yeah, Carl. How you doing?

Colloquy

14

1 UNIDENTIFIED SPEAKER: I had the wrong number.

2 JUDGE KUGLER: Well, it's too late, we're done  
3 anyway.

4 UNIDENTIFIED SPEAKER: Oh.

5 JUDGE KUGLER: Thank you anyhow, Carl.

6 UNIDENTIFIED SPEAKER: Geez, I'm really sorry about  
7 that. I was on hold, but I was on hold with the wrong number.

8 JUDGE KUGLER: Okay. Well, don't worry about it.  
9 We didn't really -- there wasn't much that went on anyway that  
10 needed to be recorded, so --

11 UNIDENTIFIED SPEAKER: Oh, okay.

12 JUDGE KUGLER: We don't -- you can hang up. Thanks  
13 anyway.

14 UNIDENTIFIED SPEAKER: All right. You bet.

15 JUDGE KUGLER: Thanks, Carl.

16 So anyway we don't need -- I don't need to decide  
17 this right now. Why don't we give this some more thought and  
18 at some point, I don't know, about in June, but certainly  
19 before the end of the summer, we'll go on the record with this  
20 and you'll all have an opportunity to speak your minds. I  
21 mean I'll set it up with -- you know, it'll be discussion  
22 about appointment of a special master, and then I'll decide by  
23 -- certainly long before Judge Schneider retires as to where  
24 we're gonna go from here. Is that okay?

25 MR. SLATER: Makes sense, Judge.

Colloquy

15

1 JUDGE KUGLER: Mr. Goldberg?

2 MR. GOLDBERG: Yeah, it does makes sense. You know,  
3 I do think we should talk about it, yeah, absolutely. So  
4 we'll talk among us before we -- and sort of set something up  
5 before we go on the record on this.

6 JUDGE KUGLER: Yep, certainly.

7 MR. GOLDBERG: All right. I won't -- it won't be a  
8 surprise. We'll set it up on a specific one of these status  
9 conferences, end of the month status conferences. We'll put  
10 it on an agenda late summer, early fall, something like that.  
11 Okay?

12 MR. SLATER: I look forward to getting back --

13 MR. GOLDBERG: Yeah, it's helpful. I just -- there  
14 are --

15 MR. SLATER: -- to Camden.

16 JUDGE KUGLER: Pardon?

17 MR. GOLDBERG: I'm sorry, I said I was --

18 MR. SLATER: I look forward to getting back to  
19 Camden.

20 JUDGE KUGLER: Yeah, well, we'll -- hopefully  
21 sometime in the not too distant future you'll -- you'll be  
22 able to come in the courthouse and act like, you know, real  
23 lawyers and we can act like real judges.

24 So anyway I'll talk to you in about a month. Stay  
25 safe, stay well. I hope your families are all doing well and,

Colloquy

16

1 you know, we're gonna get through this mess. Okay? Thank  
2 you.

3 MR. SLATER: Thank you very much, Judge.

4 MR. GOLDBERG: Thank you, Judge.

5 MR. SLATER: Bye, Seth.

6 MR. GOLDBERG: Bye-bye.

7 (Proceedings concluded)

8 \* \* \* \* \*

9 C E R T I F I C A T I O N

10 I, Roxanne Galanti, court approved transcriber,  
11 certify that the foregoing is a correct transcript from the  
12 official electronic sound recording of the proceedings in the  
13 above-entitled matter.

14  
15  
16 \_\_\_\_\_ May 29, 2020

17 ROXANNE GALANTI

18 DIANA DOMAN TRANSCRIBING, LLC  
19  
20  
21  
22  
23  
24  
25